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The Honorable Julius Genachowski
Chairman
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Re: *Notice of Proposed Rulemaking in a Matter of Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges, et al*, CG Docket Nos., 11-116 and 09-158, and CC Docket No. 98-170 ("Cramming")

Dear Chairman Genachowski:

I represent Central Telecom Long Distance, Inc. ("CTLD") in connection with the above-referenced rulemaking proceeding. CTLD is a non-facilities-based long distance carrier authorized by the Federal Communications Commission ("FCC") to provide long distance service to customers throughout the United States. CTLD does not perform its own billing and collection function, but instead relies on the various local exchange carriers in CTLD's customers' local exchange areas to perform the billing and collection function. CTLD, like most, if not all, switchless resellers, cannot economically perform its own billing and collection function. Thus, CTLD relies on LEC billing to compete in the long distance market place and to provide its customers with low price long distance service. Additionally, LEC billing affords CTLD's customers the convenience of a single bill for both local exchange service and long distance service.

The following are CTLD's comments to the FCC's proposed rules set forth in the above-referenced rulemaking proceeding. CTLD's comments are focused on the FCC's proposed rules insofar as they would prohibit wireline carriers from including on their bills to customers for local exchange service, the long distance charges from the customers' presubscribed 1+ long distance carriers, as well as the charges for related telecommunications services bundled with the presubscribed long distance service.

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CTLD agrees with the FCC's overall efforts to eliminate the placement of unauthorized third-party charges on a customer's bill, *viz.*, "cramming," and the thrust of its proposed rules designed to assist consumers in detecting and preventing the placement of such unauthorized charges on their telephone bills. CTLD, however, does not believe that the FCC should adopt a rule that absolutely prohibits wireline carriers from including on their bills the charges from long distance carriers for presubscribed 1+ telecommunications service, along with charges for telecommunications services bundled with the presubscribed 1+ service.

In its *Notice of Proposed Rulemaking*, the FCC notes that one commentator has recommended that the FCC absolutely prohibit wireline carriers from including charges from third-party vendors on their bills. Thus, along these lines, the FCC "seek[s] comment on the impact, both positive and negative, that prohibiting third-party charges on wireline telephone bills, unless the consumer opts in, may have on wireline carriers, consumers, and third parties. *Id.*, at ¶ 62. It is unclear whether the FCC's contemplated absolute prohibition includes third-party charges of long distance carriers for presubscribed 1+ telecommunications services, along with telecommunications services bundled with the presubscribed 1+ service. It is also unclear as to what the FCC means by the qualifier "unless the consumer opts in."

CTLD takes the position that the FCC should clarify that the absolute prohibition, if any, should not apply to the third-party charges incurred by long distance carriers for such presubscribed service and related bundled telecommunications services. And even if the absolute prohibition includes such third-party charges incurred by long distance carriers, the customer nevertheless should be deemed to have "opted in" when the customer agrees to change its preferred long distance carrier and the long distance carrier complies with one of the FCC's verification procedures.

More specifically, the FCC adopted rules implementing Section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act), 47 U.S.C. § 258(a), which prohibits "slamming," or the submission or execution of an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service. The FCC's rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur. 47 C.F.R. § 64.1120. Under the FCC's verification rules, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that meets the requirements of Section 64.1130; (2) obtain confirmation from the subscriber *via* a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order. 47 C.F.R. § 64.1120(c); 47 C.F.R. § 64.1120(c) 64.1130 (setting forth requirements for letter of agencies and written or electronically signed authorizations). Additionally, the FCC has adopted liability rules requiring the carrier to absolve the subscriber where the subscriber has not paid his or her bill, *see*, C.F.R. §§ 64.1140, 64.1160; or, where the subscriber has paid the charges, requiring the unauthorized carrier to pay 150% of those charges to the authorized carrier, and requiring the authorized carrier to refund to the subscriber 50% of such charges. See 47 C.F.R. §§ 64.1140, 64.1170.

Put simply, the FCC, through its rules implementing Section 258 of the Act, ensures that the subscriber has, in fact, selected, or presubscribed to, a particular carrier as his/her preferred 1+ carrier. An independent third-party verification, for example, will show that a customer has authorized the change in long distance carriers and, consequently, has authorized the long distance carrier's charges, including any such charges on the bill provided to that customer by the customer's local exchange carrier. Indeed, when customers change their preferred long distance carrier, many third-party verifiers will inform them that the charges for their presubscribed long distance service will be included on the bills sent to them by their local exchange carrier. Unlike the scenario involving mysterious and unauthorized charges -- having nothing to do with presubscribed 1+ service -- placed by third-party vendors on the customers' wireline carriers' bills, the charges for presubscribed long distance service must be authorized by the customer in accordance with FCC rules. Such charges do not involve a service where proof of consumer authorization is not generally provided to or required by the wireline carrier. Thus, such charges cannot possibly fall within the realm of cramming, and the FCC should not absolutely prohibit wireline carriers from including them on their bills.

Similarly, the FCC should not absolutely prohibit wireline carriers from including on their bills charges for telecommunications services bundled with presubscribed 1+ service, including calling card service and dial around or casual calling service. These services admittedly are not presubscribed services. *See, e.g., In the Matter of Advantage Telecommunications*, 26 FCC Rcd. 6394, ¶ 4 (released April 29, 2011) (finding that complaint involving a calling card service was not a switch of presubscribed long distance service telecommunications service); *In the Matter of Norristown Telephone Company*, 26 FCC Rcd 6421, 6422-23 (released April 29, 2011) (finding complaint involving a dial-around long distance service was not a switched presubscribed long distance service). These services, however, are telecommunications services. *AT&T Corp. Petition for Declaratory Ruling regarding Enhanced Prepaid Calling Card Services, Order and Notice of Proposed Rulemaking*, 20 FCC Rcd 4826, 4826 p. 4 (2005) (the Commission has stated that calling card services are telecommunications services (in the context of prepaid calling card services); *In the Matter of Norristown Telephone Company*, 26 FCC Rcd 8844, 8845, n. 6 (released June 16, 2011) (describing dial-around long distance service). And these bundled telecommunications services are inextricably intertwined with the provision of long distance service by the customer's presubscribed 1+ long distance carrier. Indeed, former Chairman Kennard boasted back in November 1999 of the benefits these bundled services provide customers:

> The old days of Ma Bell may have been simpler, but they also brought higher prices and stifled innovation. Today we have hundreds of long-distance service providers and calling plans. Instead of having little or no choice in long-distance, consumers now have scores of options, with some companies offering package deals at competitive rates and others boasting everything from low-cost calling cards to inexpensive dial-around plans.
>
> Consumers now have more choices than ever and long-distance calling rates that are the lowest in history. Today, virtually every American can find a calling plan, calling card or

> 10-10 dial-around number that saves money -- no matter where they live, how many calls they make a month, or were they call.

Remarks by William E. Kennard, Chairman, Federal Communications Commission before the FCC-FTC Truth-In-Advertising Public Forum Washington, DC, Thursday, November 4, 1999 (as prepared for delivery), 1999 FCC LEXIS 5569 (November 4, 1999).

Approximately four months after Chairman Kennard's statements regarding these related telecommunications services, the FCC clarified the manner in which charges for such bundled services must appear on the bill received by the customer from his/her wireline carrier:

> Bundled services are various types of services, such as telephone, cable, and Internet services, that are offered and billed by a single entity, even though they may be provisioned by multiple carriers. We clarify that, where an entity bundles a number of services (some of which may be provided by various different carriers) as a single package offered by a single company, such offering may be listed on the telephone bill as a single offering, rather than listed as separate charges by provider. Carriers providing bundled services in this manner must, however, make sure that an inquiry contact number or numbers appears on the bill for customer questions or complaints concerning the services provided through the bundle, as required by section 64.2401(d).

In the Matter of Truth-And-Billing and Billing Format, 15 FCC Rcd. 6023, 6027, ¶ 9 (released March 29, 2000).

In its Notice of Proposed Rulemaking in that proceeding, the FCC acknowledged that "The Truth-in-Billing rules permit a carrier offering a bundle to treat the bundle as a single service offering of the carrier, even though the bundle may contain services provided by others. Notice of Proposed Rulemaking, ¶ 47. The FCC observed that it "do[es] not propose or intend to change the manner in which charges for bundles may be billed under [its] rules." *Id.*, at ¶ 47. Nevertheless, the FCC stated that it "seek[s] comment on whether [its] proposed rules change the manner in which charges for bundles may be billed under [its] rules, and whether any change is necessary to protect consumers from cramming." *Id.* CTLD submits that the FCC's current slamming rules will adequately safeguard against any concerns that a long distance carrier has crammed any telecommunications services bundled with 1+ presubscribed long-distance service.

In a nutshell, these telecommunications services bundled with the customer's presubscribed 1+ long distance service are unlike the services at issue in this proceeding that are typically subscription-based and renew automatically (on a monthly, quarterly, or annual basis). It is these non-telecommunications services that have generated the bulk of the customer complaints. To the extent telecommunications services were involved to generate customer cramming complaints, the vast majority, if not all, of these telecommunications services were not ordered by the customer as telecommunications services bundled with the customer's presubscribed 1+ long distance service, but instead were non-presubscribed services solicited over the internet such that the FCC's slamming rules did not apply. *See, Long Distance Direct,* *Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 3297 (released February 17, 2000) (cramming aspect involving charges for "membership fees" and other non-telecommunications related charges, and slamming aspect subject to the FCC's slamming rules); *Main Street Telephone Company*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8853 (released June 16, 2011) (cramming involving charges for dial-around long distance service which was not bundled with presubscribed long distance service, but instead was marketed over the Internet and the customer's telephone number was simply provided to the local exchange carrier); *VoiceNet Telephone, LLC*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8874 (released June 16, 2011) (same); *Cheap2Dial Telephone, LLC*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8863 (released June 16, 2011) (same); *Norristown Telephone Company, LLC*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8844 (released June 16, 2011) (same).

To the extent the presubscribed 1+ service, or any of the telecommunications services bundled with the presubscribed 1+ service, do generate a customer complaint, the complaint presumably will be a slamming complaint, as opposed to a cramming complaint. And, as noted above, the FCC's rules already specifically address these slamming-related issues.

An absolute prohibition on all third party charges on wireline telephone bills, thus necessarily including charges for presubscribed 1+ long distance service and related bundled telecommunications services, would have deleterious effects on competition in the long distance telecommunications nationwide market place. Resellers of long distance service, including CTLD, cannot economically provide their own billing and collection functions. A rule prohibiting wireline carriers from performing the billing and collection function for long distance carriers will necessarily cause the majority, if not all, resellers of long distance service to go out of business. As a consequence, competition in the long distance market will be greatly diminished. The reduction of competition, in turn, will drive up prices for consumers. In the end, not only resellers of long distance service, but also the end user customer, will be harmed by the increased prices resulting from any such absolute prohibition placed on the wireline carrier.

An additional adverse consequence resulting from an absolute prohibition on all third party charges on wireline telephone bills would be the elimination of two types of socially vital types of calls to the extent such calls are made using a reseller's long distance service and the reseller cannot economically perform its own billing and collection function. The first type of calls involves calls made from persons incarcerated at institutions. These incarcerated persons generally have a legal right to make certain telephone calls, whether collect or otherwise, using the telephone facilities provided by the institution. If the institution, in turn, uses a reseller to complete outbound long distance calls made by an incarcerated person, and if LEC billing is absolutely prohibited, the reseller will no longer be able to bill and collect for these calls. Consequently, such calls will either no longer be able to be made, or will be made using the long distance services of a facilities based carrier at substantially higher rates.

The second type of calls involves emergency long distance collect calls made to a person who uses a reseller to make long distance calls. If LEC billing is absolutely prohibited, the reseller will no longer be able to bill and collect for these calls. Consequently, such emergency long distance collect calls will either no longer be able to be made, or will be made using the long distance services of a facilities based carrier at substantially higher rates.

Related to the CTLD's request that the FCC not adopt a rule absolutely prohibiting third party charges on wireline telephone bills, CTLD requests that the FCC clarify its proposed rule pertaining to a common carrier's blocking option, *viz.*, proposed rule 64.2401(f), so that a subscriber desiring to block third party charges will *knowingly* block any charges for presubscribed telecommunications services to the extent the subscriber actually intends to do so. The FCC's proposed blocking option rule provides that common carriers that offer subscribers the option to block third-party charges from appearing on telephone bills must clearly and conspicuously notify subscribers of this option at the point-of-sale, on each telephone bill, and on each carrier's website. CTLD submits that the rule should also provide that the common carrier specifically differentiate between non-common carrier telecommunications services and presubscribed 1+ long distance service and any telecommunications services bundled with the presubscribed 1+ long distance service. Thus, any FCC rule should ensure that customers that have presubscribed to a long distance carrier's 1+ long distance service *knowingly*, as opposed to inadvertently, block from appearing on the local exchange telephone bill the charges from the presubscribed 1+ long distance carrier, including long distance charges and the charges for any bundled telecommunications services. The customer's erroneous blocking of such charges will inevitably create not only customer confusion, but a billing nightmare for the long distance carrier who must now somehow seek payment from the customer for these agreed-upon telecommunications services.

CTLD looks forward to working with the FCC to implement reasonable reforms in the interests of better protecting consumers. CTLD urges the FCC, however, to closely consider the economic impact that the FCC's new rules will have on the millions of consumers that ultimately rely on third-party billing of presubscribed 1+ long distance service and telecommunication services bundled with 1+ presubscribed long distance service for reduced long distance costs.

Very truly yours,

Michael D. Murphy